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2
3 IN THE MATTER OF:) AGREEMENT
4 EL MONTE OPERABLE UNIT OF SAN)
5 GABRIEL VALLEY AREA 1)
6 SUPERFUND SITE)
7)
8)
9 Los Angeles County, California) U.S. EPA Region IX
10) CERCLA Docket No. 2006-24
11)
12 CITY OF EL MONTE, CALIFORNIA,) PROCEEDING UNDER SECTION
13 SETTLING PARTY) 122(h)(1) OF CERCLA,
14 _____) 42 U.S.C. § 9622(h)(1)
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TABLE OF CONTENTS

I. JURISDICTION	1
II. BACKGROUND	1
III. PARTIES BOUND	2
IV. DEFINITIONS	2
V. PAYMENT OF RESPONSE COSTS	4
VI. FAILURE TO COMPLY WITH AGREEMENT	5
VII. COVENANT NOT TO SUE BY EPA	6
VIII. RESERVATIONS OF RIGHTS BY EPA	7
IX. COVENANT NOT TO SUE BY SETTLING PARTY	8
X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION	9
XI. SITE ACCESS.....	10
XII. RETENTION OF RECORDS.....	11
XIII. NOTICES AND SUBMISSIONS.....	12
XIV. INTEGRATION.....	13
XV. PUBLIC COMMENT.....	13
XVI. ATTORNEY GENERAL APPROVAL.....	14
XVII. EFFECTIVE DATE.....	14

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Superfund Branch Chief by EPA Regional Delegation No. 1290-20.

2. This Agreement is made and entered into by EPA and the City of El Monte, California, and all of its departments and agencies, including without limitation, the El Monte Community Redevelopment Agency ("Settling Party"). Settling Party consents to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the El Monte Operable Unit of the San Gabriel Valley Area 1 Superfund Site ("Site") located in Los Angeles County, California. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing a response action, EPA has incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for Past Response Costs incurred at or in connection with the

1 Site. Settling Party does not admit any liability to EPA arising out of the Settling Party's conduct at
2 the Site, and Settling Party specifically denies that it is a responsible party pursuant to Section
3 107(a) of CERCLA, 42 U.S.C Section 9607(a), for the Site.

4 7. EPA and Settling Party recognize that this Agreement has been negotiated in good faith and
5 that this Agreement is entered into without the admission or adjudication of any issue of fact or
6 law.

7 8 III. PARTIES BOUND

9
10 8. This Agreement shall be binding upon EPA and upon Settling Party and their successors and
11 assigns. Any change in ownership or corporate or other legal status of Settling Party, including but
12 not limited to, any transfer of assets or real or personal property, shall in no way alter Settling
13 Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or
14 she is authorized to enter into the terms and conditions of this Agreement and to bind legally the
15 party represented by him or her.

16 17 IV. DEFINITIONS

18
19 9. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in
20 CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them
21 in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in
22 any appendix attached hereto, the following definitions shall apply:

23
24
25 a. "Agreement" shall mean this Agreement between EPA and Settling Party.

26
27 b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and
28 Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

1
2 c. "Day" shall mean a calendar day. In computing any period of time under this Agreement,
3 where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until
4 the close of business of the next working day.

5
6 d. "Effective Date" shall have the meaning given to it in Section XVII of this Agreement.

7
8 e. "EPA" shall mean the United States Environmental Protection Agency and any successor
9 departments, agencies or instrumentalities of the United States.

10
11 f. "Interest" shall mean interest at the rate specified for interest on investments of the EPA
12 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on
13 October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall
14 be the rate in effect at the time the interest accrues. The rate of interest is subject to change on
15 October 1 of each year.

16
17 g. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a
18 lower case letter.

19
20 h. "Parties" shall mean EPA and Settling Party.

21
22 i. "Past Response Costs" shall mean all costs, including, but not limited to, direct and
23 indirect costs, that EPA, and the U.S. Department of Justice on behalf of EPA, has paid at or in
24 connection with the Site through the Effective Date of this Agreement.

25
26 j. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

27
28 k. "Settling Party" shall mean the City of El Monte.

1
2 l. "Site" shall mean the El Monte Operable Unit of the San Gabriel Valley Area 1 Superfund
3 Site.

4 m. "United States" shall mean the United States of America, including its departments,
5 agencies and instrumentalities.

6
7 **V. PAYMENT OF RESPONSE COSTS**

8
9 10. Payment of Past Response Costs to EPA. Within 30 Days after the Effective Date of this
10 Agreement, Settling Party shall pay \$160,000 to EPA.

11
12 11. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with
13 current EFT procedures to be provided to Settling Party by EPA Region IX, and shall be
14 accompanied by a statement identifying the name and address of the party making payment, the
15 Site name, the EPA Region and Site/Spill ID Number 097B, and the EPA docket number 2006-24
16 for this action.

17
18 12. At the time of payment, Settling Party shall also send notice that payment has been made to
19 EPA in accordance with Section XIII (Notices and Submissions). Such notice shall reference the
20 EPA Region and Site/Spill ID Number 097B and the EPA docket number for this action.

21
22 13. The total amount to be paid pursuant to Paragraph 10 shall be deposited in the EMOU
23 Special Account within the EPA Hazardous Substance Superfund to be retained and used to
24 conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to
25 the EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH AGREEMENT

14. Interest on Late Payments. If Settling Party fails to make any payment required by Paragraph 10 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

15. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 10 are not paid by the required date, Settling Party will be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 14, \$500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 097B, and the EPA Docket Number 2006-24 for this action.

Settling Party shall send the check (and any accompanying letter) to:

USEPA

Attention: Region 9 Superfund Receivables

P.O. Box 371099M

Pittsburgh, PA 15251

1 c. At the time of each payment, Settling Party shall also send notice that payment has been
2 made to EPA in accordance with Section XIII (Notices and Submissions). Such notice shall identify
3 the EPA Region and Site Spill ID Number 097B and the EPA Docket Number 2006-24 for this
4 action.

5
6 d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified
7 Settling Party of the violation or made a demand for payment, but need only be paid upon demand.
8 All penalties shall begin to accrue on the day after payment is due and shall continue to accrue
9 through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate
10 penalties for separate violations of this Agreement.

11
12 16. In addition to the Interest and Stipulated Penalty payments required by this Section and any
13 other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the
14 requirements of this Agreement, Settling Party's failure or refusal to comply with the requirements
15 of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of
16 CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to
17 enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action,
18 including but not limited to, costs of attorney time.

19
20 17. Notwithstanding any other provision of this Section, EPA may, in its unreviewable
21 discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to
22 this Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as
23 required by Section V or from performance of any other requirements of this Agreement.

1 **VII. COVENANT NOT TO SUE BY EPA**

2
3 18. Covenant Not to Sue by EPA. Except as specifically provided in Section VIII (Reservations
4 of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party
5 pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. § 9607(a), or Section 7003 of the
6 Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6973, with regard to the
7 Site. This covenant shall take effect upon receipt by EPA of all amounts required by Section V
8 (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with
9 Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling
10 Party of its obligations under this Agreement. This covenant not to sue extends only to Settling
11 Party and does not extend to any other person.
12

13 **VIII. RESERVATIONS OF RIGHTS BY EPA**

14
15 19. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party
16 with respect to all matters not expressly included within the Covenant Not to Sue by EPA in
17 Paragraph 18. Notwithstanding any other provision of this Agreement, EPA reserves all rights
18 against Settling Party with respect to:
19

- 20 a. liability for failure of Settling Party to meet a requirement of this Agreement;
21
22 b. criminal liability;
23
24 c. liability for damages for injury to, destruction of, or loss of natural resources, and for the
25 costs of any natural resource damage assessments;
26
27 d. liability, based upon Settling Party's ownership or operation of the Site, or upon Settling
28 Party's transportation, treatment, storage, or disposal, or the arrangement for the transportation,

1 treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the
2 Site, after signature of this Agreement by Settling Party; and

3
4 e. liability arising from the past, present , or future disposal, release, or threat of release of a
5 hazardous substance, pollutant, or contaminant outside of the Site.

6
7 20. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant
8 not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or
9 criminal, past or future, in law or in equity, which the United States may have against any person,
10 firm, corporation or other entity not a signatory to this Agreement.

11
12 **IX. COVENANT NOT TO SUE BY SETTLING PARTY**

13
14 21. Settling Party covenants not to sue and agrees not to assert any claims or causes of action
15 against the United States, or its contractors or employees, with respect to the Site or this
16 Agreement, including but not limited to:

17
18 a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance
19 Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.
20 §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

21
22 b. any claims arising out of the response actions at the Site , including any claim under the
23 United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. §
24 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

25
26 c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42
27 U.S.C. §§ 9607 and 9613, relating to the Site.

1 These covenants not to sue shall not apply in the event that the United States brings a cause of
2 action or issues an order pursuant to the reservations set forth in paragraph 19b through e but only
3 to the extent that Settling Party's claims arise from the same response action, response costs, or
4 damages that the United States is seeking pursuant to the applicable reservation.

5
6 22. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a
7 claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.
8 § 300.700(d).

9
10
11 **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**
12

13 23. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of
14 action to, any person not a Party to this Agreement. The Parties expressly reserve any and all rights
15 (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of
16 action that they may have with respect to any matter, transaction, or occurrence relating in any way
17 to the Site against any person not a Party hereto.

18
19 24. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance
20 with this Agreement do not constitute an admission of any liability by Settling Party. Settling Party
21 does not admit, and retains the right to controvert in any subsequent proceedings other than
22 proceedings to implement or enforce this Agreement, the validity of the facts or allegations
23 contained in Section II of this Agreement.

24
25 25. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, to
26 protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of
27 CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The
28 "matters addressed" in this Agreement are all response actions taken or to be taken and all response

costs incurred, or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Agreement (except for claims for failure to comply with this Agreement), in the event that EPA asserts rights against Settling Party coming within the scope of such reservations.

26. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

27. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII.

XI. SITE ACCESS

28. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. RETENTION OF RECORDS

29. Until 3 years after the effective date of this Agreement, Settling Party shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

30. After the conclusion of the 3-year document retention period in the preceding Paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Party shall deliver any such records to EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

31. Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections

1 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42
2 U.S.C. § 6927.

3 4 XIII. NOTICES AND SUBMISSIONS

5
6 32. Whenever, under the terms of this Agreement, notice is required to be given or a document
7 is required to be sent by one Party to another, it shall be directed to the individuals at the addresses
8 specified below, unless those individuals or their successors give notice of a change to the other
9 Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any
10 written notice requirement of this Agreement with respect to EPA and Settling Party.

11
12 As to EPA:

13
14 James Collins, Assistant Regional Counsel
15 U.S. Environmental Protection Agency
16 Region IX
17 Office of Regional Counsel, ORC-3
18 75 Hawthorne Street
19 San Francisco, California 94105
20 Facsimile No. (415) 947-3570

21
22 Bella G. Dizon, RPM
23 U.S. Environmental Protection Agency
24 Region IX
25 Superfund Division, SFD 7-3
26 75 Hawthorne Street
27 San Francisco, California 94105
28 Facsimile No. (415) 947-3526

1
2
3 As to Settling Party:

4 Clarke E. Moseley

5 City Attorney for the City of El Monte

6 11333 Valley Boulevard

7 El Monte, California 91731

8 Facsimile No. (626) 580-2290

9
10 Patrick W. Dennis

11 Gibson, Dunn & Crutcher

12 333 South Grand Avenue

13 Los Angeles, California 90071

14 Facsimile No. (213) 229-6567

15
16 **XIV. INTEGRATION**

17
18 33. This Agreement constitutes the final, complete and exclusive agreement and understanding
19 between the Parties with respect to the settlement embodied in this Agreement. The Parties
20 acknowledge that there are no representations, agreements or understandings relating to the
21 settlement other than those expressly contained in this Agreement.
22

23 **XV. PUBLIC COMMENT**

24
25 34. This Agreement shall be subject to a public comment period of not less than 30 days
26 pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3)
27 of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received
28

disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XVI. ATTORNEY GENERAL APPROVAL

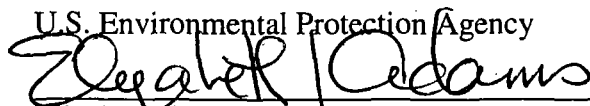
35. The Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

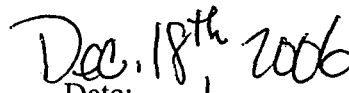
XVII. EFFECTIVE DATE

36. The Effective Date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 34 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

By:

U.S. Environmental Protection Agency

Elizabeth Adams, Chief
Site Cleanup Branch, Region IX



Date:

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of U.S. EPA Region IX CERCLA Docket No. 2006-24, relating to the El Monte Operable Unit of the San Gabriel Valley Area 1 Superfund Site :

FOR SETTLING PARTY:

City of El Monte

By:


Ernest G. Gutierrez
Mayor, City of El Monte

Date: OCT. 6, 2006